

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE NEW ENGLAND COMPOUNDING)
PHARMACY, INC. PRODUCTS LIABILITY)
LITIGATION)

MDL No. 2419
Dkt. No 1:13-md-2419 (FDS)

THIS DOCUMENT RELATES TO:)

Cases Naming Saint Thomas Outpatient)
Neurosurgical Center, LLC and Specialty)
Surgery Center, Crossville, PLLC)

**Emergency Motion for Permission to Exceed Page Limit in Filing
Memoranda in Support of “Master” or “Global” Motions to Dismiss**

Defendants Saint Thomas Outpatient Neurosurgical Center, LLC (“STOPNC”), Howell Allen Clinic, a Professional Corporation, John W. Culclasure, M.D., Debra V. Schamberg, R.N., Specialty Surgery Center, Crossville, PLLC (“SSC”), Kenneth R. Lister, M.D., and Kenneth Lister, M.D., P.C. (collectively “these Defendants”) move the Court to allow memoranda in support of “global” or “master” motions to dismiss to exceed the twenty (20) page limit provided by Local Rule 7.1.¹

First, these Defendants are moving to dismiss eight (8) different claims in their “global” or “master” motion to dismiss, which will all need to be separately briefed.² It appears that nothing in the Local Rules would prohibit the filing of separate motions to dismiss and memoranda in support for each individual claim. These Defendants would have no trouble complying with the twenty (20) page limit in doing so. But, these Defendants believe the Court will find a comprehensive motion to dismiss much easier

¹ These Defendants contacted the PSC to attempt to reach an agreement on this point, as offered by the PSC at the December 13, 2013 status conference, but the PSC never responded. Trans. 43:17-18.

² These Defendants estimate that their brief (which is still in draft form) will be between 70 and 80 pages long in total.

to digest, especially since one ground for dismissal for most of the claims concerns the applicability of Tennessee's Health Care Liability Act.³ However, it would be practically impossible to adequately brief all eight (8) issues in the 20 pages provided by the Local Rules.

Second, several issues in this case are issues of first impression in Tennessee and will require extensive briefing, including the applicability of Tennessee's Health Care Liability Act to the Plaintiffs' products liability claims against health care providers and whether Tennessee law supports the Plaintiffs' claim that these Defendants had a duty to protect the Plaintiffs from NECC's intentional actions. The Health Care Liability Act was enacted as part of the Tennessee Civil Justice Act of 2011, and it will likely be necessary for the parties to extensively discuss and cite persuasive authority from other jurisdictions due to the dearth of case law on the new statutes.

Finally, these Defendants are joining together in the same motion to dismiss and memorandum in support even though STOPNC and its codefendants (Howell Allen, John Culclasure, M.D., and Debra Schamberg, R.N.) are separate and distinct from SSC and its codefendants (Kenneth Lister, M.D. and Kenneth Lister, M.D., P.C.). The Plaintiffs' alleged identical legal claims against STOPNC and SSC since they are both Tennessee clinics governed by the Tennessee law. If STOPNC and SSC filed separate motions to dismiss, they would also be largely identical. To save the Court reading two identical motions, these Defendants are filing jointly, but that will lengthen the memorandum in support, at least to some extent. The Court should find it much easier to read and understand a slightly lengthier joint memorandum in support, than reading two largely identical full-length memoranda in support.

³ TENN. CODE ANN. § 29-26-101, *et seq.*

For the foregoing reasons, these Defendants respectfully request that the Court waive the 20 page limit for memorandum filed in support of motions provided by Local Rule 7.1.

Respectfully submitted,

GIDEON, COOPER & ESSARY, PLC

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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the CM/ECF system will be served electronically to the registered participants identified on the Notice of Electronic Filing and copies will be e-mailed or mailed via regular U.S. mail to those participants identified as unregistered this 6th day of January, 2013.

/s/ Chris Tardio

Chris Tardio